

09/463,423

REMARKS

Further to the response of October 24, 2002, as an assignment between the parties relative to the Terminal Disclaimers is not forthcoming, the Applicant withdraws the filed Terminal Disclaimers and provides the above amendments and following further remarks.

Claims 10 -17 are rejected, under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of Khoe et al. '378 in view of WO 95/11195. The Applicant acknowledges and respectfully traverses the raised double patenting rejection in view of the following remarks.

As the Examiner is aware, in order to properly support an obviousness type double patenting rejection under 35 USC §103, the applied references must provide some disclosure, teaching or suggestion that would lead one of ordinary skill in the art to combine the references as alleged by the Examiner.

The Applicant has made a thorough study of the Khoe '378 reference and notes that this reference does not; as the Examiner acknowledges, disclose a sulphur species as an oxidising source i.e. a "photoabsorber". In fact, Khoe et al. '378 states specifically at col. 2 lines 33-35 that, "Preferably the photoabsorber is iron(II) and/or iron(III) species, but in addition or independently can also be Cu(II)."

WO 95/11195 arguably relates to photoassisted oxidation of dissolved species, however, this reference teaches that in the oxidizing of Fe(II) to Fe(III), sulphur, S(IV), can be used as a substance "which is both capable of being oxidized and increasing the rate of reaction of Fe(II) to Fe(III)". WO 95/11195 does not disclose, teach or suggest in any manner sulphur as an oxidising source or photoabsorber. In fact, WO 95/11195 very clearly discloses and teaches that the photoabsorber is a dissolved cationic metal species such as Fe(II) or Fe(III), Cu²⁺, etc. (page 3, lines 27 to 33).

Even if the two references could be properly combined in an obviousness-type rejection, and the Applicant adamantly denies this possibility, such a combination still fails to teach the specifically recited features of the presently claimed invention. Namely, "...supplying an

09/463,423

oxidizable source of sulphur, and oxygen to the solution;" as recited in claim 10. In fact, in view of the clearly disclosed species of photoabsorbers in both references, none of which include sulphur, a combination of these references not only fails to teach the use of sulphur as a photoabsorber as alleged by the Examiner, by specifically reciting the alternatives, actually teaches away from the use of any other substances other than those disclosed.

In view of the above the Applicant believes that these references are not only uncombinable, but that even if a combination is proper, and this is not conceded hereby, the presently claimed invention is not disclosed, taught, or suggested in any manner. Therefore the Applicant respectfully requests withdrawal of the obviousness type double patenting rejection. As claims 11-17 are dependent upon claim 10, which is believed allowable in view of the above discussion, these claims are believed allowable for the same reasons.

New claims 18-25, have been added to provide further clarity and distinctions to the present claims over the prior art.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

09/463,423

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Scott A. Daniels, Reg. No. 42,462
Customer No. 020210
Davis & Bujold, P.L.L.C.
Fourth Floor
500 North Commercial Street
Manchester NH 03101-1151
Telephone 603-624-9220
Facsimile 603-624-9229
E-mail: patent@davisandbujold.com

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on: November 14, 2002.



Scott A. Daniels

Type name of person signing certificate

OFFICIAL**FAX RECEIVED**

NOV 18 2002

GROUP 1700

09/463,423

VERSION WITH MARKINGS TO SHOW CHANGES MADE

16. (~~TWICE~~ AMENDED) The method as claimed in claim 10, wherein the oxygen is supplied to the solution athas a partial pressure of about 0.2 atmospheres. ←
←
←